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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Devonte Okeith Mathis,

13 Defendant.
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No. CR-21-02714-001-TUC-RM (MSA)

ORDER

15 Defendant Devonte Okeith Mathis pled guilty to Conspiracy to Possess with Intent
16 to Distribute Marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), and 846;
17 and Using and Carrying a Firearm During and in Relation to a Drug Trafficking Crime,
18 and Possession of a Firearm in Furtherance of a Drug Trafficking Crime, Aid and Abet,
19 in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2, as charged in Counts One and Two of
20 the Information. (Docs. 58, 60, 61, 62.) On June 22, 2023, this Court sentenced
21 Defendant to consecutive terms of imprisonment totaling ten years, followed by
22 concurrent terms of supervised release totaling five years. (Docs. 73, 76.)

23 Defendant's plea agreement includes an agreement "to pay full restitution,
24 regardless of the resulting loss amount but in no event more than \$1,000,000, to all
25 victims directly or proximately harmed." (Doc. 61 at 5.) However, the Presentence
26 Report stated that "[n]one of the victims are requesting restitution." (Doc. 70 at 17.) The
27 Government did not request restitution for any victims in its Sentencing Memorandum
28 (Doc. 68) or at Defendant's sentencing hearing.

1 Currently pending before the Court is the Government's Motion for Sentencing
2 Order, in which the Government asks the Court to order Defendant to pay \$87,442.55 in
3 restitution to Tristar Risk Management for the costs of medical and indemnity benefits
4 paid pursuant to Arizona Workers Compensation law for victim Task Force Officer
5 P.H.'s injuries. (Doc. 80.) The Government attaches records reflecting medical
6 expenses, some of which were incurred after Defendant's sentencing hearing but the
7 majority of which were incurred prior to sentencing. (*See* Doc. 81.)

8 Pursuant to 18 U.S.C. § 3664(d)(5), if a "victim's losses are not ascertainable"
9 within ten days prior to sentencing, "the attorney for the Government or the probation
10 officer shall so inform the court, and the court shall set a date for the final determination
11 of the victim's losses, not to exceed 90 days after sentencing."

12 Here, the Court was not notified at sentencing that a victim had non-ascertainable
13 losses. To the contrary, the Presentence Report informed the Court that no victims were
14 requesting restitution. (Doc. 70 at 17.) Although the Government filed its Motion
15 shortly before the expiration of the 90-day period referenced in 18 U.S.C. § 3664(d)(5), it
16 did not raise the restitution issue early enough to allow Defendant an adequate
17 opportunity to respond.

18 Because the Government did not timely inform the Court that a victim with non-
19 ascertainable losses was requesting restitution, and because the Government did not raise
20 the issue of restitution early enough to allow Defendant a meaningful opportunity to
21 respond, the Court will deny the Government's Motion.

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1 **IT IS ORDERED** that the Government's Motion for Sentencing Order (Doc. 80)
2 is **denied**.

3 Dated this 21st day of September, 2023.

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Honorable Rosemary Márquez
United States District Judge